

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BONNIE VERBURG,	:	
	:	
Plaintiff,	:	<u>ORDER</u>
	:	19 Civ. 10837 (JGK) (GWG)
	:	
-v.-	:	
	:	
SCHOLASTIC INC., <u>et al.</u> ,	:	
	:	
Defendants.	:	
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GABRIEL W. GORENSTEIN, United States Magistrate Judge

The Court has reviewed plaintiff's letter (Docket # 52) and defendants' response (Docket # 53). The Court orders as follows:

1) The ESI documents shall be produced on January 15, 2021. The non-ESI documents shall be produced by February 5, 2021. These deadlines may be altered by written agreement of the parties and without Court Order. If agreement cannot be reached and defendants have good cause for extending the deadline, they may make an application to extend the deadline compliant with paragraph 2.A. of the Court's Individual Practices, provided that defendants also file an affidavit from an individual with personal knowledge explaining all efforts that were made to comply with the deadline.

2) The defendants fail to address the effect of Mr. Warshaw's statement that defendants were authorized to accept service of a subpoena on behalf of nonparty Dav Pilkey. The fact that Mr. Pilkey may be outside the country, represented by new counsel, or unavailable on certain dates does not affect the potential consequence of this representation. If Mr. Pilkey is unwilling to agree that Mr. Warshaw (or another attorney) can accept service of a subpoena, the plaintiff has leave to seek an order directing that service of a subpoena on Mr. Warshaw is proper service on Mr. Pilkey under Fed. R. Civ. P. 45(b)(3)¹ (incorporating 28 U.S.C. § 1783(b)) pursuant to Fed. R. Civ. P. 4(f)(3). See generally Elsevier, Inc. v. Siew Yee Chew, 287 F. Supp. 3d 374, 377-78 (S.D.N.Y. 2018). This would only address the issue of service, however, not the timing of the deposition, which should be arranged between plaintiff's counsel and Mr. Pilkey's new counsel. The Court hopes the parties will resolve this issue. If, however, it is necessary to make an application for alternative service under Fed. R. Civ. P. 4(f)(3), the Court's pre-motion conference requirement is waived and the application may be made by letter.

¹ The Court assumes that Mr. Pilkey is a "United States national or resident" under Fed. R. Civ. P. 45(b)(3).

3) Finally, the Court orders the following schedule:

- A. Fact discovery, including depositions, shall be completed by March 1, 2021.
- B. Initial expert reports, if any, are due on April 2, 2021, rebuttal expert reports are due on April 23, 2021, and expert discovery shall be completed by June 1, 2021.
- C. Any request to Judge Koeltl for permission to make a summary judgment motion shall be filed by June 8, 2021.
- D. If no request for permission to make a summary judgment motion is filed by June 8, 2021, the Joint Pre-Trial Order will be due July 8, 2021. If such a request is made, the Joint Pre-Trial Order will be due 30 days after the decision on the summary judgment motion.

SO ORDERED.

Dated: January 15, 2021
New York, New York



GABRIEL W. CORENSTEIN
United States Magistrate Judge